

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition)
Act of 1992)

MM Docket No. 92-266

Rate Regulation)

To: The Commission

REPLY OF UNITED VIDEO, INC.

Introduction

United Video submits the following reply in response to filings by various parties in the captioned reconsideration proceeding on rate regulation. As the cable industry struggles to comply with the myriad of issues stemming from rate regulation, it is increasingly evident that a number of legitimate, extraordinary costs associated with delivering cable television service have been overlooked. If the Commission takes the necessary steps to examine these costs and allow cable operators to account for such costs within the benchmark framework, rather than

stations which are considered distant signals under Section 111 of the Copyright Act. This omission is particularly critical in those instances where the cable operator is required to pay 3.75% of gross revenues for each inconsistent distant signal.

Copyright royalty fees for satellite-delivered cable networks are accounted for in the program fees paid by operators to cable networks. Copyright royalty fees for satellite-delivered distant broadcast stations are not accounted for in the program fees paid by operators to satellite carriers. Copyright fees represent an additional fee over and above program fees which cable operators must pay. These copyright royalty fees, which can be substantial, for satellite delivered broadcast stations were not considered by the Commission in establishing the benchmark rates.

Background

For all systems with semi-annual gross revenue greater than \$292,000, copyright royalty fees are calculated on a sliding scale where carriage of each distant broadcast station results in an incremental fee. Total copyright fees are calculated based on a percentage of the cable system's gross revenue. Each distant broadcast station carried in addition to the number of "permitted" stations is carried as a penalty or 3.75% signal, whereby

the operator is required to pay 3.75% of gross revenues for each penalty signal. Cable operators pay these copyright royalty fees in addition to transmission fees paid directly to the satellite carrier of the distant broadcast station.

Hence, many cable systems across the country pay mandatory copyright fees which range from 1.5% to as much as 10% of gross revenue. These fees represent a legitimate cost of business which has been omitted from the benchmark system.

Consequences of Omitting Copyright Royalty Fees from Benchmarks

At its May 1993 Cable Rate Workshop, the Commission provided worksheets for several hypothetical cable systems to illustrate the benchmark system (Public Notice #33122, May 13, 1993). Calculation of copyright royalty fees for one such system, Burning Sands, may help illustrate the significance of these fees.

According to the FCC example, in September 1992, Burning Sands offered a \$22.75/month package to subscribers containing 37 channels. Based on the FCC's benchmark calculations, this system's maximum initial permitted rate per channel was \$.649/month. Assume that Burning Sands, in compliance with rate regulation, repackaged its line-up into two tiers -- a broadcast basic tier containing 12 channels for \$7.79/month, and

a second tier containing 25 channels for \$16.23/month. The second tier contains 3 distant broadcast signals, one of which is a penalty or 3.75 signal, and 12,000 of Burning Sands subscribers choose to purchase this tier.

Copyright royalty fees for this system will be based on the gross revenues from both tiers of \$24.02/month, as both tiers contain broadcast stations and purchase of the second tier is contingent on purchase of the basic tier. Under this scenario, copyright royalty fees for the 3.75 signal alone amount to \$.89 per month per subscriber. Inclusion of base rate copyright fees results in monthly fees totaling \$1.23 per subscriber. This \$1.23 fee is a legitimate, extraordinary expense over and above the Commission's allowable benchmark fee. For Burning Sands, this represents a \$181,519 annual expense unaccounted for in the benchmarking system.

The hypothetical situation in Burning Sands is a realistic circumstance for many cable operators, especially the 435 cable systems currently carrying 3.75 signals.^{1/} While these 435 systems represent only a small fraction of systems nationwide, they serve over 8.5 million cable subscribers, or about 15% of all cable homes.

^{1/} Source: Cable Data, Summary of Copyright Statement of Account filings for the 1992-1 accounting period.

Under the current regulatory scheme, these cable systems are faced with two possible choices. First, they may be forced to initiate a cost-of-service justification with the Commission, simply because they cannot afford to cover the extraordinary copyright royalty fees out-of-pocket, nor can they afford to drop distant broadcast stations to the detriment of their subscribers. However, it is clear that many operators simply cannot afford the burdensome task of cost-of-service proceedings. This cost-of-service option represents not only an unnecessary burden on operators, but imposes an unnecessary administrative burden on the Commission and on the local franchising authorities.

As such, many operators will be forced to follow the second choice, which is to drop distant broadcast stations. This option represents an unnecessary burden as well. The cable industry will be faced with millions of angry subscribers who have already been subjected to countless channel realignments and confusing explanations of federal regulations -- demanding to know why stations which, in most cases, rank among the top ten most highly viewed cable channels, have been dropped from their line-ups.

Nor will the burden stop there. These 435 cable systems will pay an estimated \$46.0 million to the Copyright Royalty Tribunal (CRT) in 1993 for 3.75 signals alone. When these distant broadcast stations are dropped, the Copyright Office and

copyright owners will lose almost 25% of total annual copyright fees collected.

Solution

These consequences were neither envisioned nor intended by Congress or the Commission in passing and implementing the 1992 Cable Act. It is critical that the Commission recognize these consequences and account for these extraordinary costs within the benchmark framework.

As pointed out in the Longview and Kilgore Cable Television Companies' Petition for Reconsideration, copyright royalty fees should be handled in a special manner, similar to franchise fees. Thus, cable systems should be allowed to remove such fees from their monthly revenues prior to calculating their maximum permissible rates. If the Commission omitted from their calculations all copyright royalty fees, then all copyright royalty fees should be removed from monthly revenues. These fees would then be added as a separate line item as an addition to the benchmark rate.

By handling copyright royalty fees in such a manner, the Commission will spare the industry additional regulatory burdens. Cable subscribers across the country will be spared the loss of popular distant broadcast stations, cable operators will be

pared the economic burden of filing cost-of-service studies and